FILED
JUN 11 1984
ALEXANDER L. STEVAS
CLERK

No. 83-240 (7)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

LAWRENCE COUNTY AND THE LAWRENCE COUNTY COMMISSIONERS,

Appellants,

v.

LEAD-DEADWOOD SCHOOL DISTRICT No. 40-1,

Appellee.

On Appeal From The Supreme Court Of The State Of South Dakota

BRIEF FOR APPELLANTS

ALAN RAYWID
Counsel of Record
JOHN D. SEIVER
COLE, RAYWID & BRAVERMAN
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006
(202) 659-9750
Attorneys for Appellants

ROGER TELLINGHUISEN
LAWRENCE COUNTY STATES ATTORNEY
Deadwood, South Dakota 57732
Of Counsel

June 11, 1984

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

58 pp

BEST AVAILABLE COPY

QUESTIONS PRESENTED

1. Whether the Supremacy Clause of the United States Constitution voids South Dakota Codified Laws § 5-11-6 for being inconsistent with and altering the scheme of distribution of federal payments to units of local governments mandated by the Payments In Lieu Of Taxes Act, 31 U.S.C. §§ 6901-6907.

2. Whether the Supreme Court of South Dakota committed error in failing to properly analyze congressional purpose and intent and in excluding reference to legislative history when it upheld the South Dakota statute challenged as unconstitutional under the Supremacy Clause.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	7
SUMMARY OF ARGUMENT	11
ARGUMENT	14
I. The Payments In Lieu Of Taxes Act Provides A Comprehensive Payment Scheme Of Reimbursement To Units Of Local Government For The Costs Of Maintaining Tax-Exempt Federal Lands Within Their Boundaries	14
A. The Plain Meaning Of The Act Requires That Units Of General Local Government Independently Determine The Manner Of Expending Section One Funds	18
B. The Legislative History Of The Act Demonstrates That Units Of Local Government Are To Have Absolute Discretion In Expending Section One Payments	21
C. The Provision Of Special Supplemental Payments To School Districts Under Section Three Of The Act And Other Impact Aid Statutes Demonstrates That Section One Payments Could Not Be *Required* To Go To School Districts	24
II. S.D.C.L. § 5-11-6 Is Unconstitutional By Supplanting The Federal Scheme for Distribution Of Payments In Lieu Of Taxes	27
A. The Supremacy Clause Voids S.D.C.L. § 5-11-6 For Conflicting With the Act And Frustrating Congressional Purpose And Objectives	27
i. S.D.C.L. § 5-11-6 conflicts directly with the Act	31
ii. Congress' exclusive power over public lands is plenary and preempts state legislation	40

Table of Contents Continued

	Page
B. The South Dakota Supreme Court Committed Substantial Error In Its Supremacy Clause Analysis	41
i. The court improperly excluded all reference to legislative history	42
ii. The court misinterpreted the plain meaning of Section One of the Act and the Act's other provisions and ignored other acts which provide special relief to school districts	46
CONCLUSION	48

TABLE OF AUTHORITIES

CASES: Page

Aloha Airlines v. *Director of Taxation*, ___ U.S. ___, 104 S.Ct. 291 (1983) 26

Altus-Denning School District No. 31, et al. v. *Franklin County, et al.*, 568 F.Supp. 95 (W.D. Ark. 1983) ..... *passim*

Camfield v. *United States*, 167 U.S. 518 (1897) 41

Chicago & North Western Transportation Co. v. *Kalo Brick & Tile Co.*, 450 U.S. 311 (1981) 31, 32

Dickerson v. *New Banner Institute, Inc.*, ___ U.S. ___, 103 S.Ct. 986 (1983) 18, 44

Don't Tear It Down v. *Pennsylvania Avenue Development Corp.*, 642 F.2d 527 (D.C.Cir. 1980) 36

Exxon Corp. v. *Eagerton*, ___ U.S. ___, 103 S.Ct. 2296 (1983) 30

Federal Power Commission v. *Idaho Power Co.*, 344 U.S. 17 (1952) 40

Fidelity Federal Savings & Loan Association v. *de la Cuesta*, 458 U.S. 141 (1982) 29, 30, 32

Florida Lime & Avocado Growers, Inc. v. *Paul*, 373 U.S. 132 (1963) 30

Hergenreter v. *Hayden*, 295 F.Supp. 251 (D.Kan. 1968) 36

Hines v. *Davidowitz*, 312 U.S. 52 (1941) 30

Hisquierdo v. *Hisquierdo*, 439 U.S. 572 (1979) 30, 34

Huffman v. *Pursue, Ltd.*, 420 U.S. 592 (1975) 3

Ivanhoe Irrigation District v. *McCracken*, 357 U.S. 275 (1958) 40

Jones v. *Rath Packing Co.*, 430 U.S. 519 (1977) 29, 31, 44, 47

Juvenile Products Manufacturers Assoc. v. *Edmisten*, 568 F. Supp 714 (E.D.N.C. 1983) 25

Kendall v. *Towns County*, 146 Ga.App. 760, 247 S.E.2d 577 (1978) 19, 22,31

King v. *Smith*, 392 U.S. 309 (1962) 34

Kleppe v. *New Mexico*, 426 U.S. 529 (1976) 40, 41

Table of Authorities Continued

Page

Kokoskza v. *Belford*, 417 U.S. 642 (1974) 25

Lawrence County v. *State of South Dakota*, 513 F.Supp. 1040 (D.S.D. 1981) 10, 19, 28, 31, 46

Lawrence County v. *State of South Dakota*, 668 F.2d 27 (8th Cir. 1982) 10

Lead-Deadwood School District No. 40-1 v. *Lawrence County*, ___ S.D. ___, 334 N.W.2d. 24 (1983) ..2, 29

Malone v. *White Motor Corp.*, 435 U.S. 497 (1978) 30, 31, 42

Mead Township v. *Andrus*, 695 F.2d 1006 (6th Cir. 1982) 17

Middletown School Committee v. *Board of Regents*, 439 F.Supp. 1122 (D.R.I. 1977) 26, 47

National League of Cities v. *Usery*, 426 U.S. 833 (1976) 33

National Railroad Passenger Corp. v. *National Association of Railroad Passengers*, 414 U.S. 453 (1979) . 44

New Mexico v. *Mescalero Apache Tribe*, ___ U.S. ___, 103 S.Ct. 2378 (1983) 37

North Dakota v. *United States*, ___ U.S. ___, 103 S.Ct. 1095 (1983) 44

Pacific Gas & Electric Co. v. *State Energy Resources Conservation & Development Commission*, 461 U.S. ___, 103 S.Ct. 1713 (1983) 29, 30

Pennhurst State School & Hospital v. *Halderman*, 451 U.S. 1 (1981) 35

Perez v. *Campbell*, 402 U.S. 637 (1971) 33

Persinger v. *Islamic Republic of Iran*, No. 81-2003 (D.C.Cir. March 13, 1984) 26

Pettis ex rel. United States v. *Morrison-Knudsen Co.*, 577 F.2d 668 (9th Cir. 1978) 24

Philko Aviation, Inc. v. *Shacket*, ___ U.S. ___, 103 S.Ct. 2476 (1983) 30

Public Service Commission v. *Wycoff Co.*, 344 U.S. 237 (1952) 10

Rankin v. *Moran*, 684 F.2d 472 (7th Cir. 1982) 33

Table of Authorities Continued

Page

Rapid City Area School District No. 51-4 v. *Pennington County Auditor*, ___ S.D. ___, 284 N.W.2d 308 (1979) 8, 39

Ray v. *Atlantic Richfield Co.*, 435 U.S. 151 (1978) ... 30

Rice v. *Santa Fe Elevator Corp.*, 331 U.S. 218 (1947) . 29

Rocky Mountain Oil & Gas Assn. v. *Watt*, 696 F.2d 734 (10th Cir. 1982) 44

Rogers v. *Brockette*, 588 F.2d 1057 (5th Cir. 1979) .. 22, 46

Shaw v. *Delta Air Lines, Inc.*, ___ U.S. ___, 103 S.Ct. 2890 (1983) 10, 31

Shepheard v. *Godwin*, 280 F.Supp. 869 (E.D.Va. 1968) 35, 36

Silkwood v. *Kerr-McGee Corp.*, ___ U.S. ___, 104 S.Ct. 615 (1984) 30

Southland Corp. v. *Keating*, ___ U.S. ___, 104 S.Ct. 852 (1984) 3

State of Minnesota by Alexander v. *Block*, 660 F.2d 1240 (8th Cir. 1981) 41

Train v. *Colorado Public Interest Research Group*, 426 U.S. 1 (1976) 44

United States v. *American Trucking Assns.*, 310 U.S. 534 (1940) 44

United States v. *Ferry County*, 511 F.Supp. 546 (E.D.Wash. 1981) 41

United States v. *Georgia Public Service Commission*, 371 U.S. 285 (1963) 41

United States v. *Med O Farm, Inc.*, 701 F.2d 88 (8th Cir. 1983) 29, 33

United States v. *Menasche*, 348 U.S. 528 (1955) 24

United States v. *Onslow County Board of Education*, 728 F.2d 628 (4th Cir. 1984) 33

United States v. *Rodgers*, ___ U.S. ___, 103 S.Ct. 2132 (1983) 19

Van Brocklin v. *Tennessee*, 117 U.S. 151 (1886) 40

Watt v. *Alaska*, 451 U.S. 259 (1981) 44

Table of Authorities Continued

Page

Xerox Corporation v. *County of Harris*, ___ U.S. ___, 103 S.Ct. 523 (1982) 3

CONSTITUTIONAL PROVISIONS:

Article IV, § 3 cl. 2 of the United States Constitution 40, 41

Article VI, cl. 2 of the United States Constitution . *passim*

Article VI, § 26 of the Constitution of the State of South Dakota 8, 9

STATUTES:

7 U.S.C. § 1012 28

16 U.S.C. § 500 28

20 U.S.C. § 236 ..... 17, 26, 47

28 U.S.C. § 1257(2) 2

30 U.S.C. § 919 28

30 U.S.C. §§ 6901-6907, Payments In Lieu Of Taxes Act (1983 and Supp. 1984), recodifying 31 U.S.C. §§ 1601-1607 ..... *passim*

§ 6901 ..... *passim*

§ 6902 ..... *passim*

§ 6903 ..... *passim*

§ 6904 ..... *passim*

§ 6907 ..... 4, 13, 17, 24

Pub.L. 98-63, 97 Stat. 324 4

90 Stat. 2662 40

CONGRESSIONAL MATERIALS:

S.Rep. No. 1262, 94th Cong., 2d Sess., *reprinted in* 1976 U.S. Code Cong. & Ad. News 5968 ..... *passim*

H.R.Rep. No. 1106, 94th Cong., 2d Sess. (1976) 14, 17, 21, 25

H.R.Rep. No. 651, 97th Cong., 2d Sess., *reprinted in* 1982 U.S. Code Cong. & Ad. News 1895 4

Table of Authorities Continued

Page

STATE STATUTES:

South Dakota Codified Laws § 5-11-6 ..... *passim*
§ 10-12-29 38
§ 13-11-3 38
§ 13-11-7 39
Ark. Stat. Ann. § 80-726 20

RULES AND REGULATIONS:

43 C.F.R. § 1881.0-5 ..... 5, 16, 17, 32
43 C.F.R. § 1881.2 ..... 6, 7, 18
48 Fed. Reg. 42817 (Sept. 20, 1983) 5, 17

MISCELLANEOUS:

Public Land Law Review Commission, *One Third of the Nation's Land: A Report to the President and the Congress by the Public Land Law Review Commission* (Washington, D.C. 1970) 15

Murphy, *Old Maxims Never Die: The "Plain Meaning Rule" and Statutory Interpretaion in the "Modern" Federal Courts*, 75 Col.L.Rev. 1299 (1975) 45

Note, *Intent, Clear Statement and the Common Law: Statutory Interpretation in the Supreme Court*, 95 Harv.L.Rev. 892 (1982) 45

Sands, Sutherland *Statutory Construction*, (4th Ed. 1973) 25, 28

U.S. Department of Interior, *Payments In Lieu Of Taxes*, Fiscal Years 1979, 1980, 1981, 1982, 1983 ..... 15, 16

58 Comp. Gen. 19 (1978) 46

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

No. 83-240

LAWRENCE COUNTY AND THE LAWRENCE COUNTY COMMISSIONERS,
Appellants,

v.

LEAD-DEADWOOD SCHOOL DISTRICT NO. 40-1,
Appellee.

On Appeal From The Supreme Court Of The State Of South Dakota

BRIEF FOR APPELLANTS

Lawrence County and the Lawrence County Commissioners appeal to this Court and respectfully pray the Court reverse the decision of the Supreme Court of the State of South Dakota and reinstate the findings, conclusions and judgment of the trial court.[1]

OPINIONS BELOW

The findings of fact, conclusions of law and judgment entered by the trial court dismissing Lead-Deadwood School District's complaint for *writ of mandamus* and granting Lawrence County relief on its counterclaim,

[1] The listing of the parties to the proceedings below is set forth in Appellants' Jurisdictional Statement at i.

declaring South Dakota Codified Laws § 5-11-6 (Rev. 1980) unconstitutional for being in conflict with the Payments In Lieu Of Taxes Act, 31 U.S.C. §§ 6901-6907 (formerly §§ 1601-07) is not reported. The findings, conclusions and judgment appear in the Appendix to Appellants' Jurisdictional Statement ("J.S.App.") at 8a.

The majority opinion of the South Dakota Supreme Court reversing the trial court is reported at ____ S.D. ____, 334 N.W.2d 24 (1983) and appears in J.S.App. at 1a. The dissenting opinion appears in J.S.App. at 5a.

JURISDICTION

Appellants Lawrence County and the Lawrence County Commissioners appeal from a decision of the South Dakota Supreme Court in an action commenced by the Lead-Deadwood School District for *writ of mandamus*. The trial court denied Lead-Deadwood School District's prayer for *mandamus* and found for Lawrence County and the Lawrence County Commissioners on their counterclaim declaring, *inter alia*, that the South Dakota statute at issue was void under the Supremacy Clause of the United States and South Dakota constitutions for conflicting with federal law. On appeal the South Dakota Supreme Court reversed and ordered that a *writ of mandamus* issue, holding that the South Dakota statute at issue was not in conflict with federal law and therefore not void under the Supremacy Clause.

The decision of the South Dakota Supreme Court was entered on May 18, 1983 and is final. There were no petitions or orders regarding rehearing. Lawrence County and the Lawrence County Commissioners filed their Notice of Appeal on July 22, 1983, asserting 28 U.S.C. § 1257(2) as the grounds for appellate jurisdiction in this Court on account of the South Dakota Supreme Court's decision sustaining the validity of the South Dakota statute challenged on federal constitutional grounds. J.S.App. at 13a. *See Southland Corp.* v. *Keating*, ____ U.S. ____, 104 S.Ct. 852, 856 (1984); *Xerox Corporation* v. *County of Harris*, ____ U.S. ____, 103 S.Ct. 523, 525-26 (1982); *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592, 605 (1975).

On August 15, 1983, Appellants filed their Jurisdictional Statement in this Court. After the Court ordered and considered a response from the Appellee[2] and a brief from the United States as *amicus curiae*,[3] the Court noted probable jurisdiction on March 26, 1984.[4]

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article VI, Clause 2 of the United States Constitution provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

* * *

---

[2] Appellee filed its Motion to Affirm or in the Alternative to Dismiss the Appeal on November 8, 1983.

[3] The Solicitor General's office filed its brief on February 8, 1984, endorsing Appellants' position, urging the Court to note probable jurisdiction and suggesting that the Court consider summary reversal.

[4] The Solicitor General is also filing a brief at this stage, on behalf of the United States. In addition, the National Association of Counties ("NACo") and other individual counties, are filing a brief as *amici curiae* in support of Appellants.

Section One of the Payments In Lieu Of Taxes Act,[5] 31 U.S.C. § 6902(a), provides:[6]

> The Secretary of the Interior shall make payment for each fiscal year to each unit of general local government in which entitlement land is located. A unit may use the payment for any governmental purpose.
>
> * * *

Section Six of the Payments In Lieu Of Taxes Act, 31 U.S.C. § 6901(2), provides, in pertinent part:[7]

> In this chapter,—
>
> * * *

[5] Selected excerpts of the committee reports and congressional debates with regard to the consideration and passage of the Payments In Lieu Of Taxes Act appear in J.S.App. at 14a-31a.

[6] This is a recodification of 31 U.S.C. § 1601. The entire Payments in Lieu of Taxes Act, 31 U.S.C. §§ 1601-07, was recodified in 31 U.S.C. §§ 6901-06 without substantive change by Pub.L. 97-258, 96 Stat. 877 (Sept. 13, 1982). *See* H.R.Rep. No. 651, 97th Cong., 2d Sess. 1, *reprinted in* 1982 U.S.Code Cong. & Ad. News 1895. References throughout this brief will be to the recodification.

An amendment adding a new section, 31 U.S.C. § 6907 amending the definition of "units of general local government" in § 6901 and repealing § 6903(a)(4), became effective July 30, 1983. Pub.L. 98-63, 97 Stat. 324. This amendment was in response to a decision from the U.S. Court of Appeals for the Sixth Circuit. *See infra* note 21. *See also* J.S.App. at 32a-37a for text of the amendment and portions of the Conference Committee Report and congressional debate concerning this amendment.

[7] This section is a recodification and amendment of 31 U.S.C. § 1606. *See supra* note 6 and Appellants' Jurisdictional Statement ("Juris.St.") at 4. The amendment to this section, as set forth in Pub.L. 98-63, further defined units of general government to include those that provide "general" governmental services. *See infra* note 22.

> (2) "unit of general local government" means:
>
> (A) a county (or parish), township, borough existing in Alaska on October 20, 1976, or city where the city is independent of any other unit of general local government, that: (i) is within the class or classes of such political subdivisions in a State that the Secretary of the Interior, in his discretion determines to be the principal provider or providers of governmental services within the State; and (ii) is a unit of general government as determined by the Secretary of the Interior on the basis of the same principles as were used in January 1, 1983, by the Secretary of Commerce for general statistical purposes. The term "governmental services" includes, but is not limited to, those services that relate to public safety, environment, housing, social services, transportation, and governmental administration . . .
>
> * * *

43 C.F.R § 1881.0-5 provides, in pertinent part:

> (b)(1) "Unit of general local government" means a unit of that type of government which, within its state, is the principal provider of govermental services affecting the use of entitlement lands. Those services of government include (but are not limited to) maintenance of land records, police protection, fire protection, taxation, land use planning, search and rescue and road construction. Ordinarily, a unit of general local government will be a county . . .[8]
>
> * * *
>
> (b)(2) The term "unit of general government" excludes single purpose or special purpose units of local government such as school districts or water districts.

[8] Section 1881.0-5(b)(1) was amended September, 1983 to add the word "local" after the word "general", to conform to Congress' 1983 amendment. 48 Fed.Reg. 42817 (Sept. 20, 1983). *See infra* note 21.

43 C.F.R. § 1881.2 provides, in pertinent part:

> The monies paid to entitled units of local government may be used for any governmental purpose except as noted [for Section Three payments].
>
> * * *

Section Three of the Payments In Lieu Of Taxes Act, 31 U.S.C. § 6904, provides, in pertinent part:[9]

> (a) In addition to payments the Secretary of the Interior makes under section 6902 of this title, the Secretary shall make a payment for each fiscal year to a unit of general local government collecting and distributing real property taxes (including a unit in Alaska outside the boundaries of an organized borough) in which is located an interest in land that—
>
> (1) The United States Government acquires for—
>
> (A) the National Park System; or
>
> (B) the National Forest Wilderness Areas; and
>
> (2) was subject to local real property taxes within the 5-year period before the interest is acquired.
>
> (b) The Secretary shall make payments only for the 5 fiscal years after the fiscal year in which the interest in land is acquired. Under guidelines the Secretary prescribes, the unit of general local government receiving the payment from the Secretary shall distribute payments proportionally to units and school districts that lost real property taxes because of the acquisition of the interest. A unit receiving a distribution may use a payment for any governmental purpose . . .
>
> * * *

[9] This section is a recodification of 31 U.S.C. § 1603. *See supra* note 6.

> (d) The Secretary may prescribe regulations under which payments may be made to units of general local government when subsections (a) and (b) of this section will not carry out the purpose of subsections (a) and (b).
>
> * * *

South Dakota Codified Laws § 5-11-6 (1981) provides:

> The county auditor shall distribute federal and state payments in lieu of tax proceeds in the same manner as taxes are distributed.

STATEMENT OF THE CASE

On February 15, 1982, Lead-Deadwood School District No. 40-1 (the "School District") filed its complaint for *writ of mandamus* in the Circuit Court for the Eighth Judicial Circuit of South Dakota. Joint Appendix ("J.A.") at 1a. The School District sought to have Lawrence County and the Lawrence County Commissioners (collectively the "County") ordered to distribute to the School District funds received by the County from the United States government under Section One of the Payments in Lieu of Taxes Act, 31 U.S.C. §§ 6901-07 (1983 and Supp. 1984) (the "Act"). *Id.* Section One of the Act, 31 U.S.C. § 6902(a), provides for payments to counties and other units of local government that have certain federal tax-exempt lands within their boundaries to reimburse those units of local government for lost tax revenues and the costs of providing services for those federal lands. Payments under Section One of the Act may be used by the recipient unit of local government "for any governmental purpose." 31 U.S.C. § 6902(a); 43 C.F.R. § 1881.2. The County had received payments under the Act from the federal government, but had not distributed any to the School District. J.A. at 2a, 10a.

The alleged authority for *mandamus* and the requested distribution to the School District was South Dakota Codified Laws ("S.D.C.L.") § 5-11-6, which directed that all federal payments in lieu of taxes, *i.e.*, all payments under the Act, be distributed in the same manner as state taxes. The school districts in Lawrence County, including Lead-Deadwood School District, had received sixty percent of the County's regular tax proceeds and therefore were entitled to sixty percent of the County's Section One payments pursuant to S.D.C.L. § 5-11-6. J.S.App. at 2a and 10a.

The County answered the complaint and counterclaimed for a declaration that S.D.C.L. § 5-11-6 was in direct conflict with the terms and purposes of the Act so as to be declared void under the Supremacy Clause of the United States and South Dakota Constitutions. J.A. at 4a.[10] Because Section One of the Act provides that the payments to the units of local government may be used for *any* governmental purpose, the County argued that, consistent with congressional purpose and the terms of the Act itself, Congress granted the County, as a unit of local government, absolute discretion in determining how to expend the payments it received under Section One of the Act as compensation for the tax immunity of federal lands within its boundaries. *See* J.A. at 5a. The County also argued that the State of South Dakota could not direct any portion of the County's Section One funds to school districts nor any other entity in South Dakota,

[10] The County also sought dismissal of the Complaint for failure of the Plaintiff to join the County's auditor as a Defendant. J.A at 4a. It appears that the action against the County and the County Commissioners is improper in that a *writ of mandamus* would only issue as to the county auditor. *See* Rapid City Area School District No. 51-4 v. Pennington County Auditor, ___ S.D. ___, 284 N.W.2d 308, 312 (1979).

which were not units of local or general government as defined in the Act and regulations promulgated thereunder, and that the state could not impose any conditions on the County's determination of the appropriate governmental purposes to be served by the payments. *See* J.A. at 6a-8a.

The matter was submitted to the trial court on a stipulation of facts. J.A. at 10a. On September 27, 1982, the trial court entered judgment for the County and against the School District, finding that S.D.C.L. § 5-11-6 stood as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress under the Act and as such was unconstitutional and void under the Supremacy Clause of both the United States and South Dakota Constitutions. J.S.App. at 10a. The trial court also held that the County was permitted to use all the payments received from the federal government under Section One of the Act for any lawful purpose without regard to S.D.C.L. § 5-11-6. J.S.App. at 11a.[11]

On October 18, 1982, the School District appealed the trial court's judgment to the South Dakota Supreme Court. J.A. at 12a. On May 18, 1983, the South Dakota Supreme Court reversed the trial court and remanded the matter, directing that a *writ of mandamus* issue ordering the County to pay over the federal payments received by the County under the Act to the School District in accordance with S.D.C.L. § 5-11-6. J.S. App. at 4a. Although the South Dakota Supreme Court did not examine the Act's legislative history or the Act as a whole, the court found that S.D.C.L. § 5-11-6 was in harmony with the Act and therefore not an obstacle to the

[11] There was no issue presented as to South Dakota's power to control the expenditure of any payments in lieu of *state* taxes made by the *state* government to the County.

fulfillment of the Act's purposes. *Id.* Two justices of the South Dakota Supreme Court dissented, reasoning that S.D.C.L. § 5-11-6 undermined the accomplishment and execution of the full purposes and objectives of Congress by earmarking funds for school districts contrary to the terms of the Act, the congressional grant of discretion to the County, and the Act's legislative history. *Id.* at 5a. The dissent concluded that the trial court's decision should have been affirmed. *Id.* at 7a. This appeal followed.[12]

The constitutionality of S.D.C.L. § 5-11-6 was initially challenged by the County in the United States District Court for the District of South Dakota well before the School District filed its complaint in state court. In *Lawrence County* v. *State of South Dakota*, 513 F.Supp. 1040, (D.S.D. 1981), *vacated on other grounds*, 668 F.2d 27 (8th Cir. 1982), the district court found that the total discretion given counties under Section One of the Act was abridged by S.D.C.L. § 5-11-6 and the Court declared the state statute void under the Supremacy Clause. *Id.*, 513 F.Supp. at 1043. The United States Court of Appeals for the Eighth Circuit vacated the decision on jurisdictional grounds. *Id.*, 668 F.2d at 28, 31.[13] The School District's

[12] As of this date, the *writ of mandamus* has not issued.

[13] The court of appeals held that the district court was without jurisdiction to render the declaratory relief because the constitutional challenge to the state statute was only defensively raising a federal question and was therefore not within the court's federal question jurisdiction. *Id. See* Public Service Commission v. Wycoff Co., 344 U.S. 237, 248-49. *But see* Shaw v. Delta Airlines, Inc., ___ U.S. ___, 103 S.Ct. 2890, 2899, n.14 (1983) (federal question jurisdiction exists where suit seeks injunctive relief from state regulation allegedly preempted by federal law under the Supremacy Clause).

The Eighth Circuit's decision did not, however, affect the substance of Appellants' claim. The district court's opinion remains persuasive and another district court followed it in finding that an Arkansas statute, similar to S.D.C.L. § 5-11-6 in apportioning payments under the Act, improperly conflicted with the Act. Altus-Denning School District No. 30 v. Franklin County, 568 F.Supp. 95, 102 (W.D.Ark. 1983). *See infra* p. 19.

mandamus action was filed in state court three weeks after the Eighth Circuit's decision.[14]

SUMMARY OF ARGUMENT

The Payments in Lieu of Taxes Act provides a comprehensive scheme for minimum payments by the federal government to counties and other units of local government to compensate them for the tax immunity of federal lands within their boundaries. As evidenced in the Act itself and in the legislative history, the payments under Section One of the Act were intended by Congress to be used by the local governments for any governmental purpose because these local governments were deprived of tax revenues and at the same time were required to provide a variety of services for the maintenance of federal lands. Due to the diversity of lands encompassed by the Act and the recognition that costs of maintaining the lands varied greatly, restrictions on the use of these funds were deemed improper.

These payments are supplemented by additional payments to units of local government under Section Three of the Act, for lost revenues due to federal acquisitions of

[14] The Attorney General for the State of South Dakota defended the County's action in federal court, but, despite being served with notice in the state court action, J.S.App. at 9a, as well as the notice of appeal and Jurisdictional Statement here as required by the Court's rules, has not yet appeared in this litigation to defend the constitutionality of the South Dakota statute. In 1980, the South Dakota Attorney General did issue an opinion finding that S.D.C.L. § 5-11-6 was not in conflict with the Act nor preempted under the Supremacy Clause. *See* Opinion No. 80-12.

park and wilderness lands which were taken off the tax rolls after 1969. These additional payments are distributed to units of local government but must be redistributed proportionately to affected school districts under regulations issued by the Department of the Interior.

The South Dakota law at issue would require that *all* federal payments under the Act, including Section One payments, be distributed in the same manner as regular tax proceeds and not, as the Act directs, to the units of local government to be spent in their discretion. This scheme not only conflicts directly with the Act, but frustrates both the express and implied purposes of the Act by substituting the state's judgment for that of Congress. Congress recognized that the special costs to units of local government of providing services for federal lands are unique and that other statutes which provide payments for federal lands directly to the state governments oftentimes did not result in any compensation going to the counties or were restricted to use for roads or schools and did not compensate the local governments for the special costs of maintaining federal lands. Congress therefore determined that payments under the Act should go *directly* to the units of local government and not be earmarked for any special purpose so that the local governments would have absolute discretion in determining where to spend the funds. Further, because Congress expressly included school districts in Section Three of the Act but excluded them from Section One, it follows that school districts cannot receive Section One payments directly, but only those which the County independently determines to provide.

The South Dakota statute, therefore, runs afoul of the Supremacy Clause for two reasons. First, the state stat-

ute conflicts with the terms of the Act and frustrates the basic purpose and objectives of the Act. The Act's primary and overriding purpose is to reimburse units of *local* government both for the loss of their tax revenues and the special costs of providing services for these tax-exempt lands. The legislative history of the Act leaves no doubt—largely because of the inequities of distributions from state governments under other statutes—that Congress vested absolute discretion in the units of local government to determine which of their governmental purposes would be most appropriately served by the expenditure of their Section One receipts due to the unique costs of services required by the presence of federal lands within their boundaries.

Second, the federal government's authority to regulate public lands is absolute and any federal statute or regulation dealing with public lands preempts state legislation on the subject.

Finally, the recent amendment adding 31 U.S.C. § 6907 grants limited authority to state governments to redistribute Section One payments among smaller units of local government in proportion to the amount of tax-exempt lands within their respective boundaries. The fact that Congress chose to amend the Act to give the states this limited authority demonstrates that no such authority existed prior to the amendment. The amendment does not retroactively authorize the South Dakota statute and, in any event, the South Dakota statute goes beyond any such authority as it requires a redistribution of payments to entities other than units of local government and not in proportion to the amounts of federal lands within the units' boundaries.

ARGUMENT

I. The Payments In Lieu Of Taxes Act Provides A Comprehensive Payment Scheme Of Reimbursement To Units Of Local Government For The Costs Of Maintaining Tax-Exempt Federal Lands Within Their Boundaries

The presence of tax-exempt federal lands within the boundaries of state and local governments has generated considerable legislation by Congress designed to compensate for the loss of tax base and reimburse local governments for the costs of providing and maintaining services for the federal lands. Many of the statutes give to state and local governments a share of revenues derived from oil and gas leasing, mining, grazing and other income producing activities on the lands. *See, e.g.*, 31 U.S.C. § 6903(a)(1)(A)-(J). In addition to these revenue-sharing statutes, and in response to many of the inequities under these statutes, Congress passed the Payments In Lieu of Taxes Act ("the Act"), 31 U.S.C. §§ 6901-07,[15] which provides for payments by the federal government directly to units of *local* governments, as opposed to state governments, to compensate them for the costs of maintaining public lands, most of which were not directly producing any revenues. S.Rep. No. 1262, 94th Cong. 2d Sess. 1, *reprinted in* 1976 U.S. Code Cong. & Ad. News 5968 ("S.Rep. No. 1262"); H.R.Rep. No. 1106, 94th Cong. 2d Sess., 4-5 (1976) ("H.R.Rep. No. 1106").[16]

These federal lands, known as "entitlement lands" under the Act, were determined by Congress to have adversely affected the tax base of the various local governments where the lands are located due to the absence of income producing activities which would allow

---

[15] *See supra* note 6.

[16] Selected excerpts of these reports appear in the Appendix to Appellants' Jurisdictional Statement at 14a-23a.

funds to accrue to the local governments as well as the inequitable distributions of funds under already existing revenue sharing statutes.[17] *See* S.Rep. No. 1262 at 7-10, J.S.App. at 15a-17a. The recommendation of the Public Land Law Review Commission, which had been established to report on these inequities and formulate a new policy for reimbursing local governments, was that certain federal lands must be preserved so that they may be used and enjoyed by all Americans and that the United States was obligated to spread the burden of this policy among the public at large so it would not be borne solely by those localities where the federal lands are located.[18] The Act translated this basic principle into law by "recogniz[ing] the burden imposed by the tax immunity of Federal lands [and] providing minimum federal payments to units of local government within the boundaries of which these lands lie." S.Rep. No. 1262 at 6.[19] One of

---

[17] Entitlement lands include those lands that are: (1) in the national park or national forest systems; (2) administered by the Bureau of Land Management; (3) dedicated to federal water resource projects; (4) used by the Army for mobilization and reserve training; (5) dredge disposal areas; (6) in the vicinity of Purgatory River and Pinyon Canyons, Colorado; or (7) are special Interior reserve lands. 31 U.S.C. § 6901(1)(A)-(G). Lands excluded from the definition, and for which no payments are made under the Act, include some 60 million acres administered by the Departments of Defense, Transportation and other agencies. S.Rep. No. 1262 at 14, n.15; 31 U.S.C. § 6902(c).

[18] Public Land Law Review Commission, *One Third of the Nation's Land: A Report to the President and the Congress by the Public Land Law Review Commission* (Washington, D.C. 1970), at 236 *quoted in* S.Rep. No. 1262 at 6.

[19] Approximately seventeen hundred counties in forty-nine states (and the District of Columbia) have 450 million acres of federally owned and tax-exempt lands within their boundaries for which they receive payments approaching $100 million annually under the Act. U.S. Department of Interior, Bureau of Land Management, *Payments In Lieu Of Taxes, Fiscal Year 1983*; Appendix D to Brief of *amici curiae* NACo, *et al.*

Congress' overriding concerns was to provide compensation to the local governments for their providing a variety of services, including police, fire and other protection for maintaining the federal lands. *See infra* Part IB; J.S.App. at 16a. These costs varied by location as well as by type of entitlement lands. *Id.* Accordingly, payments were to be made directly to units of general local government to be used by them for *any* governmental purpose under Section One of the Act.[20]

Congress also sought to define which governmental entities would receive the payments. In the most recent codification of the Act, a "unit of general local government" is defined to include counties, parishes, townships, municipalities, boroughs, or other units of government below the state which is a unit of general government and principal provider of governmental services—*e.g.*, public safety, environment, housing and social services—as determined by the Secretary of the Interior. 31 U.S.C. § 6901(2). When Interior promulgated its implementing regulations, it provided that to receive Section One funds, the units must be the principal provider of governmental services which affect the use of the entitlement lands. 43 C.F.R. § 1881.0-5(b)(1). Ordinarily these units

[20] Payments under Section One of the Act to a unit of general local government is based on the total acreage of entitlement lands within its boundaries limited by a *per capita* population factor. 31 U.S.C. § 6903. The County received approximately $400,000 in payments under the Act for 1979-1981. J.A. At 6a; J.S. App. at 1a, 9a. In 1982, the County received an estimated $116,214 and in 1983 an estimated $142,127. *Payments in Lieu of Taxes, Fiscal Year 1982*, Schedule 2, p. 58; *Fiscal Year 1983*, Schedule 2, p. 57. The County received no Section Three payments for the years 1982 and 1983 and only one county in South Dakota, Pennington County, received payments under Section Three in 1982.

would be counties. *Id.*[21] Special purpose units such as school and water districts were *not* units of general government and are ineligible to receive Section One payments directly. *Id.* § 1881.0-5(b)(2). This determination was affirmed in the Act's recent amendment to 31 U.S.C. § 6901(2),[22] as well as in the legislative history. "The definition of 'unit of local government' assures that counties, cities, towns and townships . . . and other units of local government that have general governmental responsibilities, *as opposed to single purpose functions such as school districts* and water districts, will be the recipients of these payments." H.R.Rep. No. 1106 at 12, J.S. App. at 23a (emphasis supplied).[23] Indeed, the

[21] The Secretary also found that in some cases towns or townships would be the appropriate recipients. 43 C.F.R. § 1881.0-5. However, when the Secretary determined that townships in Michigan could not receive Section One payments, six townships there challenged the regulation and were determined to be proper recipients of Section One payments. Mead Township v. Andrus, 695 F.2d 1006 (6th Cir. 1982). In response to that decision, Congress amended the Act and states are now allowed the limited authority to redistribute payments under the Act to smaller units of general government, such as townships, that have entitlement lands within their boundaries. 31 U.S.C. § 6907. But, as Congress found and the district court in Arkansas agreed, the Secretary of the Interior's method of defining units of local government was proper—the units must provide *general* governmental services. *See* Altus-Denning School District No. 30-1, 568 F.Supp. at 101; 48 Fed.Reg. 42817 (Sept. 20, 1983).

[22] The Act's original definition of units of local government in 31 U.S.C. 1606(c), and as recodified in 1982 at § 6901(2), referred only to units of general government and did not contain the "principal provider of governmental services" language or list the types of services in the definition. Juris.St. at 4. These provisions were added by amendment in 1983 when congress also added a new section, § 6907, partially in response to the decision in Mead Township v. Andrus. *See supra* note 21.

[23] Congress had already provided for special funds to be paid to school districts on account of the added costs of educating federal employees living on tax exempt federal lands. *See* 20 U.S.C. § 236.

legislative history of the Act leaves no doubt that the units of local government were to have absolute discretion in determining how and where to expend Section One funds—in large part due to the inequities of distributions under other statutes directly to *state* governments. *See infra* Part IIA(i).

S.D.C.L. 5-11-6, changes the federal scheme by limiting the County's discretion. That statute requires the County to distribute the in-lieu payments as it distributes regular tax proceeds. *See supra* p. 7. This scheme of distribution would result in the direct payment to the School District and other school districts within Lawrence County of sixty percent of the County's Section One payments from the federal government. J.S.App. at 10a.[24] This restriction on the County's discretion and redirection of the funds contradicts the plain and express language of the Act, frustrates Congress' most basic purpose and objectives underlying the Act and is inconsistent with other legislation already in place to assist impacted school districts.

A. The Plain Meaning Of The Act Requires That Units Of General Local Government Independently Determine The Manner Of Expending Section One Funds

The starting point for statutory analysis necessarily begins with the words of the statute itself. *Dickerson* v. *New Banner Institute, Inc.*, ___ U.S. ___, 103 S.Ct. 986 (1983). The operative language which controls the disbursement of Section One funds is as follows: "A unit [of general local government] may use the payment for any governmental purpose." 31 U.S.C. § 6902(a); *see also*

[24] If the other special districts in Lawrence County that receive tax proceeds from the County joined in the School District's action, the County would have *no* discretion in determining how to expend its Section One payments; all of them would be spoken for. *See infra* p. 38.

43 C.F.R. § 1881.2. Congress' choice of the word "may" implies that some degree of discretion was given to the unit. *United States* v. *Rodgers*, ___ U.S. ___, 103 S.Ct. 2132, 2149 (1983). Further, the word "any" is defined as "some; *one out of many;* an indefinite number . . . ". Black's Law Dictionary, 86 (5th ed., 1979) (emphasis supplied). Thus, under the statutory language of Section One itself, discretion and choice are conferred upon and reserved to the unit of local government. It alone has the discretion to choose *which* particular governmental purpose is appropriate.[25] It is plain, then, from this language that an attempt by South Dakota to restrict the discretion, or pre-determine the local units' "governmental purposes" is inconsistent with the words "may" and "any" as well as with the nature of the grant—the funds are paid directly to the *local* governments, not the state governments. The state of South Dakota simply cannot tell the local unit how to expend its funds without undoing the federal scheme.

In *Altus-Denning School District No. 31* v. *Franklin County*, 568 F.Supp. 95 (W.D.Ark. 1983), the court found that an Arkansas statute which similarly redirected Section One funds would be unconstitutional. The Arkansas statute provided that those Arkansas counties which receive funds from the federal government "for the support

[25] In the Act, Congress did not define the possible governmental *purposes* to be served by the payments. The courts have held that payments to school districts would constitute one of many proper governmental purposes. Kendall v. Towns County, 146 Ga.App. 760, 247 S.E.2d 577 (1978); Lawrence County v. State of South Dakota, 513 F.Supp. at 1042. Congress subsequently defined units of local government by types of governmental services provided, including services related to "public safety, environment, housing, social services, transportation and governmental administration." 31 U.S.C. § 6901(2)(A) (Supp. 1984). Presumably, expenditures for these services would also qualify as uses for governmental purposes.

of public schools" on account of national forest lands must distribute those funds to school districts. Ark. Stat. Ann. § 80-726. National forest lands are entitlement lands under the Act and that acreage is counted in computing a county's Section One payments. 31 U.S.C. § 6901(1). The court found that Interior's regulation properly excluded school districts from its definition of "units of local government" and, in any event, that Arkansas could not direct Section One funds to school districts by statute. (568 F.Supp. at 102, emphasis in original):

> Thus, even though Congress no doubt intended for some of the in lieu of tax funds to go to school districts, believing that the counties would disburse these funds with prudence, equity, and an eye to the obvious needs of the school districts, Congress nonetheless expressly allowed whichever unit constitutes the "unit of local government" of 31 U.S.C. § 1606(c) to expend these funds for *any* governmental purpose.

Here, S.D.C.L. § 5-11-6 requires the County expend its Section One payments precisely like regular tax proceeds. By replacing "any" with a specific governmental purpose, S.D.C.L. § 5-11-6 conflicts with the plain meaning of the language of the Act.[26] Indeed, it would result in the County having no discretion to distribute the Section One payments as all tax proceeds are distributed in proportion to the budgets submitted to the County by its various subdivisions, including the School District. *See infra* p. 38.

---

[26] The South Dakota Supreme Court found to the contrary, limiting their focus to the fact that expenditures on schools is *a* governmental purpose and therefore consistent with the word *any*. J.S.App at 3a-4a. This simplistic analysis ignores that the choice and determination of governmental purpose is conferred upon the *county* and not the *state*. *See infra* Part IIB.

B. The Legislative History Of The Act Demonstrates That The Units Of Local Government Have Absolute Discretion In Expending Section One Payments

The legislative history of the Act and statements of the Act's supporters and sponsors emphasize that Congress was designating Section One payments to be used by local governments in *their* discretion. This would achieve the purpose of providing reimbursement directly to the local governments closest to and impacted most directly by the presence of federal tax-exempt lands. (H.R.Rep. No. 1106 at 12, J.S.App. 22a).[27]

> . . . [T]he Committee believes that *payments under H.R. 9719 should go directly to units of local government since it is the local governments that assume the burden for the tax immunity of these lands.* The Committee does not believe these new payments should be restricted or earmarked for use for specific purposes and the bill allows these payments to be used for any governmental purpose. (Emphasis supplied).

State income and sales taxes as well as other revenue sharing statutes, which allow some revenues generated on federal lands to go to the states, were deemed inadequate to compensate the local units of government because the control which states exert under those revenue sharing acts often resulted in counties receiving little or no compensation. (S.Rep. No. 1262 at 9; J.S.App. at 16a).

> Many of the revenue sharing provisions permit the States to make the decisions on how the funds will be distributed. In far too many States, the result has been that the funds are either kept at the State level

---

[27] *See generally* Brief of *Amici Curiae* NACo, *et al.*, for a description of the political realities and need to compensate directly the local units of government closest to the lands for the costs and burdens of supporting the federal lands within their boundaries.

> and not distributed to local governments at all or are parcelled out in a manner which provides shares to local governments other than those in which the Federal lands are situated and where the impacts of the revenue and fee generating activities are felt.

Thousands of visitors come each year to some federal lands, yet the income and intangible economic benefits to the local economy "do not usually accrue to the local taxing authority. Income and sales taxes are sources of funds for the State treasury, yet the local governments are the entities which must provide for law enforcement, road maintenance, hospitals, and other services directly and indirectly related to the activities on these lands." S.Rep. No. 1262 at 9; J.S. App. at 16a. Congress therefore made clear its intention to provide payments under Section One of the Act to be used by the counties for their particular needs as they saw fit without state interference.[28]

The South Dakota statute attempts to do precisely what Congress determined should not be done even by the federal government *itself*—earmark Section One payments.[29] The ultimate result would be, of course, to eliminate *all* discretion because all of the County's regular tax proceeds are distributed according to a pre-

---

[28] That Congress expressly found a "basic distrust" of the states is important. Not only did Congress determine that no restrictions could be imposed by Congress *itself*, *see*, *e.g.*, statutes listed in 31 U.S.C. § 6903, it implied that no restrictions could be imposed by state governments. Accordingly, the states have no authority, express *or* implied to involve themselves in the Act's program. *Cf.* Rogers v. Brockette, 588 F.2d 1057, 1072 (5th Cir.) *cert. denied* 444 U.S. 827 (1979).

[29] "Since under the law as written it is provided that funds may be allocated for any governmental purpose, the Secretary recognized that 'limitations cannot be placed upon the use of these funds by regulations.'" Kendall v. Towns County, 247 S.E.2d at 579.

designated plan based on budgets and levies. This is simply not how Congress intended the Act's payments to be distributed.

Congress' decision to treat federal payments under Section One of the Act differently from tax proceeds is not only a statement of congressional preference expressed in the Act and its legislative history, but quite logical. In finding that the existing revenue sharing provisions were inadequate, Congress noted the different types of costs incurred in supporting activities on federal as opposed to private lands.

> Even in the few instances when a local government's share of the various revenues and fees is sufficient to meet service demands arising from the Federal lands and to approximate the loss of ad valorem tax revenues which would otherwise be generated by those lands, *too many of the revenue sharing provisions restrict the use of funds to only a few governmental services—most often the construction and maintenance of roads and schools. Yet, local governments are called upon to provide many other services to the Federal lands or as a direct or indirect result of activities on the Federal lands.* These services include law enforcement; search, rescue and emergency; public health; sewage disposal; library; hospital; recreation; and other general local government services. *It is only the most fortunate of local governments which is able to juggle its budget to make use of those earmarked funds in a manner which will accurately correspond to its community's service and facility needs.*
>
> * * *
>
> While the Committee does not discount the fact that some benefits accrue to localities where national parks, monuments and wilderness areas are located, the revenues produced for the local community do not match the burdens of providing additional police and fire protection, search and rescue service, medical and hospital facilities, and other governmental

> responsibilities required in and around these areas because of the influx of visitors.

S.Rep. No. 1262 at 9, 13 (emphasis supplied); J.S.App. at 16a, 17a. Congress recognized that the burden of tax exempt property falls directly on the units of local government which must provide police, fire and other services and therefore the Act provides that the counties and *not the states* are to determine how Section One payments are to be distributed. The Act's purpose in making these payments to units of local governments for their discretionary expenditure would be frustrated by South Dakota's attempt to redirect the payments.[30]

C. The Provision Of Special Supplemental Payments To School Districts Under Section Three Of The Act And Other Impact Aid Statutes Demonstrates That Section One Payments Could Not Be *Required* To Go To School Districts

Congress did express special concern for affected school districts and provided for their compensation under a separate section of the Act. As a supplement to payments under Section One of the Act, Section Three of the Act provides for additional payments to units of local government for lands acquired for national park systems or forest wilderness areas after December 31, 1970. 31 U.S.C. § 6904. Unlike Section One payments, which are not earmarked for any special purpose, Section Three

[30] Congress' recent amendment authorizes states to make limited redistributions of payments under the Act among units of local government. 31 U.S.C. § 6907. This limited authority does not now support the complete rewriting of Congress' plan in S.D.C.L. § 5-11-6. *See supra* n.21. Further the limited authority in the amendment supports the conclusion that the states had *no* authority to redistribute the payments at all; otherwise the section would be mere surplusage. United States v. Menasche, 348 U.S. 528, 538-39 (1955); Pettis ex rel. United States v. Morrison-Knudsen Co., 577 F.2d 668 (9th Cir. 1978).

payments are to be distributed under guidelines established by the Secretary of the Interior on a proportional basis to counties and affected school districts which have incurred losses of real property taxes as a result of the addition of land to the federal park and wilderness systems. *Id.*

These Section Three payments provide supplemental assistance to the units of local government and school districts for five years after the land's acquisition. These payments are designed to alleviate the *immediate* impact of removing land from the tax rolls. S.Rep. No. 1262 at 18; J.S.App at 18a. *See also* H.R.Rep. No. 1106 at 11; J.S.App. at 21a. This express provision providing compensation for school districts in Section Three supports the conclusion that Congress did not intend any of the Section One payments to go to the school districts except those the county independently decided to provide.[31] This was the conclusion reached on this precise issue in *Altus-Denning School District*, 568 F.Supp. at 101 (emphasis in original):

> The inference that Congress did not intend funds received under [Section One] to be distributed to school districts is supported by the fact that in [Section Three] Congress provided for payments to be made by the Secretary of the Interior to counties for lands acquired within such counties by the government for the Redwood National Park or acquired for the National Park System or National Forest Wilderness areas. The [Section Three] funds are to be distributed on a proportional basis to units of local government and affected school districts. This sug-

[31] Analysis of Section One of the Act necessarily entails construction of the Act as a whole and analysis of the entire Act's nature and purpose. Kokoskza v. Belford, 417 U.S. 642, 650 (1974); Juvenile Products Manufacturers Assoc. v. Edmisten, 568 F.Supp. 714, 718 (E.D.N.C. 1983); A. Sutherland, 2A *Statutes and Statutory Construction*, § 46.05, 56 (4th Ed. 1973).

> gests that Congress, for some inexplicable reason intended to treat [Section One] funds differently from [Section Three] funds.

Accordingly, Congress made a distinction which would be effectively dropped from the Act if Section One payments could be legislatively directed to the school district. *See Aloha Airlines* v. *Director of Taxation*, ____U.S. ____, 104 S.Ct. 291, 294 n.6 (1983) (". . . the statute is quite clear that Congress chose to make the distinction and the courts are obliged to honor this congressional choice.")[32]

Again, this distinction is quite logical. School district budgets generally correspond to population distribution and thus fairly apportion the expense of maintaining public schools to those persons and communities that derive benefits from public education. The majority of the entitlement lands, however, are uninhabited and provide no added costs for the school districts. Where there are tax-exempt federal lands with school children, compensation is provided not only by Section Three, but by the special impact aid provided by 20 U.S.C. § 236. *See Middletown School Committee* v. *Board of Regents*, 439 F.Supp. 1122 (D.R.I. 1977). Thus, Congress, while not barring school districts from Section One allocation, expressly provided for school districts by other relief appropriations. Congress' express designation underscores that *any* governmental purpose indicates a broader choice than just school districts—a choice reserved to

[32] *See also* Persinger v. Islamic Republic of Iran, No. 81-2003 (D.C.Cir., March 13, 1984) Slip Op. at p. 15 ("Where Congress uses explicit language in one part of a statute to cover a particular situation and then uses different language in another part of the same statute, a strong inference arises that the two provisions do not mean the same thing.").

local government. The State's redistribution primarily to school districts undermines this congressional intent.[33]

II. S.D.C.L. § 5-11-6 Is Unconstitutional By Supplanting The Federal Scheme For Distribution Of Payments In Lieu Of Taxes

The Supremacy Clause comes into play here not in the usual situation of federal law preempting an already established state scheme of regulation, rather the reverse—state law is interfering with a prior existing federal scheme. Moreover, it is a federal scheme distributing federal funds and, as such, the offending state statute must give way under the Supremacy Clause.

S.D.C.L. § 5-11-6 disrupts the federal scheme for distributing payments under the Act by imposing restrictions on the local government's use of Section One payments. By providing that all federal payments in lieu of taxes to units of local government in South Dakota be distributed in the same manner as normal tax proceeds, the state government has substituted its own scheme for reimbursing local governments burdened with federal tax-exempt lands in their boundaries.

Congress, however, expressly determined that payments were to go to counties and not to state governments, so as to avoid the state governments' control over the distribution of the payments. *See supra* p. 22. An examination of Section Four of the Act, 31 U.S.C. § 1604,

[33] Reallocation of Section One funds to school districts would unfairly shift the burden of public education from private property, generally occupied by the state's citizens, to counties with uninhabited lands. Maintenance of the federal lands ordinarily imposes quite different burdens on local governments than budgeting expenses for schools. Further, it is for the Secretary of Interior, not the state, to set the guidelines for distributing Section Three payments. 31 U.S.C. § 6904. S.D.C.L. § 5-11-6 purports to reallocate these payments as well.

underscores this determination. That section lists ten statutes which provide for revenue sharing payments to be made to state[34] and local governments[35] to return a percentage of the revenues derived by the federal government from the operations on certain federal lands. Those payments are generally earmarked for particular purposes and are subtracted out from any Section One payments to be made to the local governments to avoid double payments. 31 U.S.C. § 6903(b)(1)(A). To cure the inequities of those distributions, Congress provided that payments under Section One of the Act would go *directly* to local governments so that states would not be determining their distribution, nor restricting their use to particular purposes.[36] "These reports and the other evidence cited by this Court clearly establish that Congress intended to provide monies under [31 U.S.C. § 6902] to the counties for them to use for their particular needs." *Lawrence County* v. *State of South Dakota*, 513 F.Supp. at 1042. *Accord, Altus-Denning School District*, 568 F.Supp. at 102. ". . . Congress was directing the states to keep their noses out of the manner in which a

---

[34] *See, e.g.*, 16 U.S.C. § 500 (payment of 25% of national forest receipts to states for schools and roads); 30 U.S.C. § 919 (payment of 50% of oil and gas royalties from federal lands to states for expenditures as they direct).

[35] *See, e.g.*, 7 U.S.C. § 1012 (25% of certain farm revenues paid to counties for schools and roads).

[36] The restriction on the use of federal funds in the Section Four statutes was one of the primary reasons for establishing that Section One payments were to be used "for *any* governmental purpose." J.S.App. at 16a-17a. Those statutes should be read *in pari materia* with the Act in determining its construction and meaning. 2A Sands, Sutherland *Statutory Construction* § 51.03 (4th Ed. 1973). The restrictions on the use of funds in those statutes support the conclusion that the "*any* governmental purpose" language in the Act meant that *no* restrictions were to be imposed on the use of Section One payments by *anyone*.

county would distribute these funds." *Lead-Deadwood School District* v. *Lawrence County, et. al.*, ____ S.D. ____, 334 N.W.2d. 24-27 (1983) (Dunn, J. dissenting) (J.S.App. at 6a). The South Dakota statute seeks to substitute the state's judgment for that of Congress in attempting to impose restrictions on the use of Section One payments, which Congress determined should not be imposed, and by directing payments to entities other than units of general local government. The state statute is therefore void under the Supremacy Clause.

A. The Supremacy Clause Voids S.D.C.L. § 5-11-6 For Conflicting With The Act And Frustrating Congressional Purpose And Objectives

There is no question that Congress may, within constitutional limits, preempt state authority to legislate in a particular area in express terms. *Jones* v. *Rath Packing Co.*, 430 U.S. 519, 525 (1977). Further, Congress may implicitly preempt state regulation where "[t]he 'scheme of federal regulation . . . [is] so pervasive as to make reasonable the inference that Congress left no room [for the States] to supplement it', because 'the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject,' or because 'the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose.' " *Pacific Gas & Electric Co.* v. *State Energy Resources Conservation & Development Commission*, 461 U.S. ____, 103 S.Ct. 1713, 1722 (1983), *citing Fidelity Federal Savings & Loan Association* v. *de la Cuesta*, 458 U.S. 141, 152 (1982) and *Rice* v. *Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). This is no less true where state law interferes or infringes upon federal programs. *United States* v. *Med O Farm, Inc.*, 701 F.2d 88, 90 (9th Cir. 1983).

Where Congress has entirely displaced state regulation, state law is preempted and nullified to the extent it conflicts with federal law. *Pacific Gas & Electric Co.*, ___ U.S. at ___, 103 S.Ct. at 1722.[37] "Such a conflict arises when compliance with both federal and state regulations is a physical impossibility," *Id. citing Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S.132, 142-43 (1963), or where state law "stands as an obstacle to the accomplishment of the full purposes and objectives of Congress." *Id., citing Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941). *Accord, Silkwood* v. *Kerr-McGee Corp.*, ___ U.S. ___, 104 S.Ct. 615, 621 (1984); *Philko Aviation, Inc.* v. *Shacket*, ___ U.S. ___, 103 S.Ct. 2476, 2479 (1983); *Exxon Corp.* v. *Eagerton*, ___ U.S. ___, 103 S.Ct. 2296, 2301 (1983); *Fidelity Federal Savings & Loan*, 458 U.S. at 153; *Ray* v. *Atlantic Richfield Co.*, 435 U.S. 151, 158 (1978). The preemption is all the more apparent where the federal scheme was in place and the state legislation followed as an alteration of the federal program.[38]

A determination of conflict "is essentially a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question whether they are in conflict" and "in deciding whether any conflict is present, a court's concern is necessarily

---

[37] "Often Congress does not clearly state in its legislation whether it intends to preempt state laws; and in such instances, the courts normally sustain local regulation of the same subject matter unless it conflicts with federal law or would frustrate the federal scheme, or unless the courts discern from the totality of the circumstances that Congress sought to occupy the field to the exclusion of the States." Malone v. White Motor Corp., 435 U.S. 497, 504 (1978).

[38] The fact that the program involves federal entitlements does not, in and of itself, preempt all state regulation. Hisquierdo v. Hisquierdo, 439 U.S. 572, 588 (1979). Rather, traditional Supremacy Clause analysis applies. *Id.*

with the nature of the activities which the states have sought to regulate, rather than on the method of regulation adopted." *Chicago & North Western Transportation Co.* v. *Kalo Brick & Tile Co.*, 450 U.S. 311, 317-18 (1981). Most importantly, the Court must "consider the relationship between [the] state and federal laws as they are interpreted and applied, *not merely as they are written.*" *Jones* v. *Rath Packing Co.*, 430 U.S. at 526 (emphasis supplied). Furthermore, "[t]he purpose of Congress is the ultimate touchstone." *Malone* v. *White Motor Corp.*, 435 U.S. at 504 (1978).[39]

i. S.D.C.L. § 5-11-6 conflicts directly with the Act

The South Dakota statute requires payments to go directly to school districts. This statutory requirement is in fact a contradiction of the Act. Although the County's *voluntary* distribution of Section One payments to the School District would be consistent with the Act,[40] any attempt to regulate this distribution by *requiring* that payments be made directly to the School District would be, in effect, a requirement that the Section One funds go to an entity other than an eligible unit of local government

---

[39] The nature and extent of the conflict may of course be gleaned not only from the statute's express language, but that implicitly contained in its structure and purpose. Shaw v. Delta Airlines, Inc., ___ U.S. ___, 103 S.Ct. 2890, 2899 (1983); Jones v. Rath Packing Co., 430 U.S. at 525.

[40] If the units of local government want to distribute some of the money to school or other special purpose districts, they certainly could as such a distribution would qualify as a use for a "governmental purpose." Lawrence County v. State of South Dakota, 513 F.Supp. at 1042; Kendall v. Towns County, 247 S.E.2d at 579.

as defined in the Act[41] and in Interior's regulations.[42] This conflicts directly with the Act's payment plan, notwithstanding the fact that payment to a school district may be deemed a governmental purpose. The state does not retain the authority to compel the county to do what it *could* otherwise do. *Chicago & Northwestern Transportation Co.*, 450 U.S. at 318.

In *Altus-Denning School District No. 31*, the court construed the predecessor to § 6901(2) to exclude school districts from the list of eligible recipients of Section One payments by upholding the Secretary's regulations expressly excluding them. (568 F.Supp. at 101, citations omitted):

> Plaintiffs have submitted numerous authorities for the proposition that the purpose of Congress was, at least in part, to compensate schools for lost revenue. This may well be true . . . However, 31 U.S.C. § 1601 provides clearly that "[s]uch payments may be used by such unit *for any governmental purpose*." "*Such unit*" refers to "unit of local government" as defined in section 1606(c).
>
> Thus, even though Congress no doubt intended for some of the in lieu of tax funds to go to school districts, believing that the counties would disburse these funds with prudence, equity, and an eye to the

[41] 31 U.S.C. § 6901(2) does not list school districts as typical units of general local government. The pre-amendment version of § 1606(c) as recodified in § 6901(2) also excluded school districts. Juris.St. at 4.

[42] 43 C.F.R. § 1881.0-5. Interior's regulations in this area are entitled to deference and are controlling as to the operation of the statute. Fidelity Federal Savings & Loan Assn., 458 U.S. at 154. Further, Interior's determination that school districts are not units of government so as to be eligible to receive Section One payments has sustained judicial challenge. Altus-Denning School District No. 31, 568 F.Supp. at 101. Indeed, the correctness of this determination was affirmed by Congress in amending 31 U.S.C. § 6901(2). *See supra* note 21.

> obvious needs of the school districts, Congress nonetheless expressly allowed whichever unit constitutes the "unit of local government" of 31 U.S.C. § 1606(c) to expend these funds for any governmental purpose.
>
> * * *
>
> Without a clearer indication that Congress intended school districts to constitute "units of general government" within the meaning of section 1606(c) so as to be included within the term "unit of local government" in section 1606(c), which it could easily have so declared, either at the time or within the five years subsequent, we can hardly say that the Secretary acted in excess of his authority, unconstitutionally, or otherwise unlawfully.

Similarly, it is irrelevant whether or not the state may have had a proper motive in determining to direct Section One payments to be expended in a particular manner. "Even if the state legislature in passing its law had some purpose in mind, other than one of frustration, we must still strike down the law if it actually impedes the operation of the federal statute." *Rankin* v. *Moran*, 684 F.2d 472, 475 (7th Cir. 1982) *quoting Perez* v. *Campbell*, 402 U.S. 637, 651-52 (1971). *See also United States* v. *Med O Farm, Inc.*, 701 F.2d at 90 (state's rules rejected which would thwart federal program's objectives).[43] The South Dakota statute conflicts directly then with Congress'

[43] Although South Dakota may have strong interest in promoting education and full funding for school districts, it may not rearrange the federal program. The Act's payments *benefit* the localities where the federal lands are located and by virtue of the fact that payments are federal and no disruption or displacement of the state's freedom to structure its integral operations in areas of traditional government functions is involved, the state has no independent right under the Tenth Amendment to legislate with respect to the payments. *See* United States v. Onslow County Board of Education, 728 F.2d 628, 638 (4th Cir. 1984). *See also* National League of Cities v. Usery, 426 U.S. 833, 851, 855 (1976).

scheme for distributing Section One payments and is therefore void under the Supremacy Clause.

In *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572 (1979), this Court struck down California's attempt to redirect federal pension benefits under its community property laws. Congress had determined that the benefits go to a retiree alone and the state could not reallocate them. The Court held that the federal nature of the benefits did not by itself proscribe the entire field of state control. 439 U.S. at 583. Rather, it utilized the traditional Supremacy Clause analysis to determine whether the state regulation conflicted with terms of federal law or whether its "consequences [would] sufficiently injure the objectives of the federal program to require nonrecognition." *Id.* This court found that (*Id.*):

> "[Federal law] ensures that the benefits actually reach the beneficiary. It preempts all state law that stands in its way. . . . It prevents the vagaries of state law from disrupting the national scheme, and guarantees a national uniformity that enhances the effectiveness of congressional policy.
>
> * * *
>
> [What the state] seeks conflicts with [federal law], promises to diminish that portion of the benefit Congress has said should go to the retired worker alone, and threatens to penalize one whom Congress has sought to protect. It thus causes the kind of injury to federal interests that the Supremacy Clause forbids. It is not the province of state courts to strike a balance different from the one Congress has struck.

The fact then that Congress directed federal payments under the Act to particular local governments means that a state may not redirect them. It is clear that the Congress can impose terms and conditions upon how its payments to the local governments are to be disbursed. *King* v. *Smith*, 392 U.S. 309, 333 n.34 (1962). If Congress

intends to impose a condition on the grant of federal moneys, it must do so unambiguously. *Pennhurst State School & Hospital* v. *Halderman*, 451 U.S. 1, 17 (1981). This Congress has done without question under the Act—it has conditioned the grant on the absence of conditions. It did so in order that the beneficiary—the County—receive the funds without conditions. The State may not impose conditions for what Congress intended to be an unconditional grant.

There are two additional district court decisions similar to *Altus-Denning* and the earlier *Lawrence County* decision which hold that a state's tampering with a federal plan for distributing payments is unconstitutional. In *Shepheard* v. *Godwin*, 280 F.Supp. 869 (E.D.Va. 1968), the court struck down a Virginia law which affected Congress' scheme for providing compensation to certain school districts. Congress had sought to provide extra payments to those school districts whose populations were enlarged by federal employees' children but whose revenues had been decreased because of the presence of federal lands. 280 F.Supp. at 871. The federal government determined that supplemental payments should go directly to these school districts, but Virginia law provided that these supplemental payments would be subtracted when determining the amount of the state's payments to the school districts, thereby eliminating the helpful effect of the federal payments. 280 F.Supp. at 872-73. In holding the Virgina law invalid under the Supremacy Clause, the court concluded that "the State formula wrenches from the impacted localities the very benefaction the act was intended to bestow. The State plan must fall as violative of the Supremacy Clause of the Constitution. Our decision rests entirely on the terms, pattern and policy of the act." *Id.* at 874. The court also found that the absence of any restriction upon state action in the statute supported, rather than detracted from, the

conclusion that the states could not legislate in the area or otherwise tamper with the federal payment scheme (*Id.* at 875):

> . . . as we have already noted, the moneys are paid to the locality and not to the State, and there was no apparent reason to include any restriction upon the State. Moreover, *this omission from P.L. 874 originally, or as reenacted, would seem to imply that no touch, direct or indirect, of the money by the State was even remotely permissible.* (emphasis supplied)[44]

This same conclusion was reached by the court in *Hergenreter* v. *Hayden*, 295 F.Supp 251 (D.Kan. 1968). There the court struck down a Kansas law which sought to realign similar federal payments (*Id.* at 255):

> Neither of defendants' contentions can be sustained. We think it is clear upon the law and the evidence that the State of Kansas is tampering with the distribution of federal funds contrary to Congressional intent expressly in P.L. 874, and hence is in violation of the Supremacy Clause of the United States Constitution, Article VI, Clause 2.
>
> * * *
>
> The admitted purpose of the Kansas legislature, no matter how laudable its motive or, theoretically, how valuable its end in aiding education in federal impact

[44] Where a state asserts control over federal activities or obstructs Congressional purpose, an authorization of state regulation would be found only where Congress explicitly mandates or clearly and unambiguously authorizes such regulation. Don't Tear It Down v. Pennsylvania Avenue Development Corp., 642 F.2d 527, 536 (D.C.Cir. 1980). Such a mandate or authorization is absent here. Under Congress' recent amendment, state regulation is only authorized to the extent of redistributing payments among units of local government and not determining governmental purposes for which the local govenments can use their Section One payments. *See supra* note 21. Accordingly, the Act does not authorize states to redistribute federal funds in the manner prescribed by S.D.C.L. § 5-11-6.

> areas, was to substitute state judgment for federal judgment, as reflected in the state and federal statutes considered here. No matter how salutary the state legislation, it must give way under the Supremacy Clause.

Similarly, in *New Mexico* v. *Mescalero Apache Tribe*, ___ U.S. ___, 103 S.Ct. 2378 (1983), the Court found that a state's attempts to regulate conduct on the Mescalero Apache Tribe's reservation was an unconstitutional infringement of the Tribe's authority because of the special treaty and statutory rights conferred upon the Tribe by the federal government. The Court found that New Mexico's hunting and fishing laws, applicable throughout the state, could not be imposed on the Tribe's reservation. *Id.* at 2391. In reaching this determination, the Court looked to the historical and "crucial" backdrop of traditional notions of tribal sovereignty. Finding Congress' purpose to be the promotion of tribal self-governance, independence and power to manage its territory and resources, the Court held that the imposition of New Mexico's own laws for hunting and fishing on the land was void. (___ U.S. at ___, 103 S.Ct. at 2389, citations omitted):

> Federal law commits to the Secretary and the Tribal Council the responsibility to manage the reservation's resources. It is most unlikely that Congress would have authorized, financed, and participated in Tribal management if it were thought that New Mexico was free to nullify the entire arrangement. Requiring Tribal ordinances to yield whenever State law is more restrictive would seriously undermine the secretary's [and the Tribe's] ability to make the wide range of determinations committed to [their] authority . . .
>
> * * *
>
> The assertion of concurrent jurisdiction by New Mexico not only would threaten to disrupt the federal

> and tribal regulatory scheme but would also threaten Congress' overriding objective of encouraging tribal self-government and economic development.
>
> * * *
>
> The disruptive effect that would result from the assertion of concurrent jurisdiction by New Mexico would plainly "stan[d] as an obstacle to the accomplishment of the full purposes and objectives of Congress" . . .

Here, Congress has insisted that the local governments operate autonomously by committing federal funds to be used in their discretion. No conditions were to attach to the Act's payments so that each local unit can determine how to best survive the impact on their budget created by the presence of federal lands. Where Congress has sought to insulate the local governments from interference in using the payments, the state may not otherwise direct their use. Indeed, to do so not only alters the purpose of distribution to local governments in the first instance, but changes the intended recipient. Under the South Dakota law, the County is merely a conduit—a cashier—for the school districts and other districts, rather than the beneficiary of the funds as Congress intended and directed. It is highly improbable that Congress would have specially created the Act's payment system only to have it rearranged by the states.

The conflict between S.D.C.L. § 5-11-6 and the Act is all the more evident from the nature of the public finance laws in South Dakota. South Dakota requires school districts to submit budgets to the county auditors and then the county spreads a levy over all the taxable property sufficient to raise the money requested. S.D.C.L. §§ 10-12-29, 13-11-3. The counties retain no independent authority on a yearly basis to determine the amounts to be budgeted to the school districts; the counties are obliged to transfer to the school districts their proportionate

share of the moneys received every month. S.D.C.L. § 13-11-7. This is the manner in which all the subdivisions of the County are funded.

During the time period covered in the School District's Complaint, it and other school districts in the County received approximately sixty percent of the total levy by Lawrence County on the county's taxable lands. J.S.App. at 10a. Under S.D.C.L. § 5-11-6, the School District and other school districts in the County would then receive sixty percent of all the in lieu payments made by the federal government to the County. *See* J.A. at 7a.[45] If all the other special districts and subdivisions petitioned the County for their proportionate share, then the County would retain no discretion to distribute the funds; it would be merely a conduit to the special districts. The County cannot overcome this result because the County is required to pay all regular tax proceeds, without reduction, to the districts. *See Rapid City Area School District No. 51-4* v. *Pennington County Auditor*, ____ S.D. ____, 284 N.W.2d 308, 312 (1979). The federal payments would therefore not perform the purpose of assisting the County in meeting its obligations—the special districts would simply receive windfalls.[46] Thus, by operation of S.D.C.L. § 5-11-6, all discretion to use the Act's payments "for any governmental purpose" is restricted—indeed eliminated.

---

[45] The court below apparently thought that the School District alone would receive sixty percent of the County's payments under the Act. J.S.App. at 2a. The County's answer and the stipulation of facts, however, indicate that this sixty percent would go to other school districts in the county as well. *See* J.A. at 7a; J.S.App. at 10a.

[46] The School District has not alleged that it has not received sufficient funds to meet its needs. *See* Rapid City Area School District, 284 N.W.2d at 310.

ii. Congress' exclusive power over public lands is plenary and preempts state legislation

The South Dakota statute is also preempted because it purports to regulate activities with respect to the federal government's lands, an area exclusively reserved to Congress by the Property Clause, Article IV, § 3 cl. 2 of the United States Constitution.[47] *See Kleppe* v. *New Mexico*, 426 U.S. 529, 539 (1976) (Congress has the power to determine what are "needful" rules respecting public lands); *Ivanhoe Irrigation District* v. *McCracken*, 357 U.S. 275, 294-95 (1958) (the power over the public land thus entrusted to Congress is without limitations); *Federal Power Commission* v. *Idaho Power Co.*, 344 U.S. 17, 21-22 (1952) (the power of Congress over public lands under the Property Clause is without limitations).

Under the Act, Congress has determined that units of local government, and not state governments or special districts, are to be compensated directly for the costs associated with the presence of federal lands within their boundaries. 31 U.S.C. § 6902; *see* J.S.App. at 16a. In a sense, Section One payments are similar to any other expenditures Congress might make for the maintenance of these properties. The state's interference must therefore fall as an unconstitutional infringement on Congress' exercise of its powers under the Property Clause. "Where . . . state laws conflict with . . . legislation passed pursuant to the Property Clause, the law is clear. The state laws must recede.," *Kleppe* v. *New Mexico*, 426 U.S. at 543 (citation omitted). Further, as the Court

---

[47] The payment program in the Act arises out of the federal government's ownership and operation of public lands. *See* 90 Stat. 2662. There is no question that without the Act or other statutes, local governments would not be able to tax or otherwise derive revenues from the lands. Van Brocklin v. Tennessee, 117 U.S. 151 (1886).

reasoned in *State of Minnesota by Alexander* v. *Block*, 660 F.2d 1240, 1249 (8th Cir. 1981) (footnote omitted):

> Under this authority to protect public land, Congress' power must extend to regulation of conduct on or off the public land that would threaten the designated purpose of federal lands. Congress clearly has the power to dedicate federal land for particular purposes. As a necessary incident of that power, Congress must have the ability to insure that these lands be protected against interference with their intended purposes.

Inasmuch as South Dakota's redirection of the Act's payments would likely adversely affect the maintenance of the federal lands, it is void. "A different rule would place the public domain of the United States completely at the mercy of state legislation" *Kleppe*, 426 U.S. at 543 *quoting Camfield* v. *United States*, 167 U.S. 518, 526 (1897). Congress' determination is therefore final and state legislation affecting the determination is preempted by the Act's grant of discretion to the counties to expend funds for *any* governmental purpose.[48]

B. The South Dakota Supreme Court Committed Substantial Error In Its Supremacy Clause Analysis

As the foregoing amply demonstrates, the South Dakota legislation is void under the Supremacy Clause because it directly conflicts with the Act and frustrates congressional purpose. The errors committed by the Su-

---

[48] Congress can constitutionally delegate its decision-making power as to expenditures of these funds to counties consistent with the Property Clause. *See* United States v. Ferry County, 511 F.Supp. 546, 552 (E.D.Wash. 1981). Here, Congress determined that units of local government are to expend funds in *their* discretion and "a state is without power by reason of the Supremacy Clause to provide the conditions on which the federal government will effectuate its policies." United States v. Georgia Public Service Commission 371 U.S. 285, 293 (1963).

preme Court of South Dakota in failing to determine that S.D.C.L. § 5-11-6 was unconstitutional are twofold. First, the court failed to analyze any of the Act's legislative history; second, the court analyzed only one sentence of the Act in isolation when it concluded that S.D.C.L. § 5-11-6 was in harmony with the Act. These errors prevented a complete evaluation of congressional purpose which is the touchstone of Supremacy Clause analysis. *Malone* v. *White Motor Corp.*, 435 U.S. at 504.[49]

i. The court improperly excluded all reference to legislative history

In ignoring the Act's legislative history, the South Dakota Supreme Court misused the well worn maxim that where legislation is purportedly clear and unambiguous on its face, there need be no resort to extrinsic aids to determine its meaning or purpose. In refusing to examine the legislative history, the court below reasoned (J.S.App. at 3a):

> [The County] would have us launch this inquiry with an examination of the legislative history of the Act. However, resort to legislative history is justified only when legislation is ambiguous or its literal meaning is absurd or unreasonable. Absent these circumstances we must give legislation its plain meaning. We cannot amend it to produce or avoid a particular result . . . In our view, the scriveners of 31 U.S.C. § 1601, wrote it in plain, clear and rational language. We therefore need not look to legislative history. By the plain words of 31 U.S.C. § 1601, the federal money distributed to appellees "may be used by such unit for any governmental purpose."

---

[49] The South Dakota Supreme Court did not challenge the County's argument that federal law preempted conflicting state law under the Supremacy Clause. J.S.App. at 3a. The court simply failed to perform the required analysis to determine whether state law did conflict with the terms and purposes of the Act.

> S.D.C.L. § 5-11-6 requires distribution of these federal payments as taxes are distributed and thus school districts are recipients. Support of school districts is a governmental purpose.
>
> * * *
>
> [The County] receive[s] federal money in lieu of taxes that the entitlement land would be subject to if it were not owned by the federal government. One such tax is a school tax. We find no conflict between the two laws. If Congress intended to prohibit § 1601 funds from going to school districts, it could have done so by writing that prohibition into § 1601. However the only restriction placed on these funds is that they be used for a governmental purpose, which it is under S.D.C.L. § 5-11-6.

In the face of what appears to be a contrary interpretation of the plain meaning of the statute, the court used "the plain meaning rule" to foreclose *any* analysis of legislative history which would have proven its analysis erroneous.[50] The overlooked legislative history emphatically demonstrates that the Act's overriding purpose was to provide local governments with funds to be used, as they determine, to pay for the unique costs associated with providing services for federal lands with-

---

[50] Actually, the court appears to be searching for a justification for its conclusion because it did not even analyze the "plain meaning" of the Act correctly. *See supra* Part IA. It is "plain" that South Dakota's attempt at defining a governmental purpose under the Act is inconsistent both with the word *any* as well as the grant of the funds to *local* as opposed to *state* governments. *Id.* It is especially irrelevant that Congress did not "expressly exclude" school districts in Section One. J.S.App. at 3a. Payments to schools are clearly a governmental purpose, but "any" governmental purpose is not synonomous with a specific governmental purpose determined by the state and not the unit of local government. Thus, it is evident that the plain meaning of the Act supports a finding that the state statute conflicts with the Act.

in their boundaries. *See supra* Part IB. The Act's legislative history and the express congressional purposes stated therein cannot be excluded merely because language "on its face" may be clear. "Even the most basic general principles of statutory construction must yield to clear contrary evidence of legislative intent." *National Railroad Passenger Corp.* v. *National Association of Railroad Passengers*, 414 U.S. 453, 458 (1979). *See also Watt* v. *Alaska*, 451 U.S. 259, 266 (1981) (plain meaning rule does not preclude consideration of persuasive evidence if it exists). Further, as this Court concluded in *Train* v. *Colorado Public Interest Research Group*, 426 U.S. 1, 9-10 (1976), *citing United States* v. *American Trucking Assns.*, 310 U.S. 534, 543-544 (1940):

> To the extent that the Court of Appeals excluded reference to the legislative history of the FWPCA in discerning its meaning, the court was in error. As we have noted before: "When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.' "

See also Dickerson v. *New Banner Institute, Inc.*, ___ U.S. ___, 103 S.Ct. 986, 994 (1983) ("as in all cases of statutory construction, our task is to interpret the words of the statute in light of the purposes congress sought to serve"); *Jones* v. *Rath Packing Co.*, 430 U.S. at 526, ("a Supremacy Clause inquiry requires [the court] to consider the relationship between state and federal laws as they are interpreted and applied not merely as they are written."); *Rocky Mountain Oil & Gas Assn.* v. *Watt*, 696 F.2d 734, 745 (10th Cir. 1982) ("Congressional purpose and intent are best divined by examining the statute's legislative history"). *Cf. North Dakota* v. *United States*, ___ U.S. ___, 103 S.Ct. 1095, 1102 (1983) (unless

legislative intention expressed to the contrary, language of statute is conclusive).[51]

Accordingly, the South Dakota Supreme Court's attempt to ascertain the meaning of the Act on its face was an incomplete and overly simplistic inquiry; this is made evident by the fact that statutory purpose is more clearly determined from the accompanying legislative history than from a narrow reading of the Act. In this instance it expresses a diametrically opposite direction and intent than that construed by the South Dakota court. Indeed, employing the Act's legislative history, the dissent concluded that S.D.C.L. § 5-11-6 did conflict with federal law. Quoting S.Rep. No. 1262 at 9 (*see* J.S.App. at 16a-17a), Justice Dunn reasoned (J.S.App. at 6a):

> This statement makes it abundantly clear that *Congress was directing the states to keep their noses out of the manner in which a county would distribute these funds.* I believe Congress intended the county be vested with total discretion in distributing [Section One] funds. While the county may choose to distribute part of the [Section One] funds to the school district, *see Kendall* v. *Towns County*, 146 Ga.App. 760, 247 S.E.2d 577 (1978), I do not believe the county can be forced to do so as contemplated by S.D.C.L. § 5-11-6. *By the passage of S.D.C.L. § 5-11-6, South Dakota was undermining the very intent and purpose of the Act by earmarking sixty percent of the funds for school districts.*[52]

---

[51] *See generally* Note, *Intent, Clear Statement and the Common Law: Statutory Interpretation in the Supreme Court*, 95 Harv. L.Rev. 892 (1982); Murphy, *Old Maxims Never Die: The "Plain Meaning Rule" and Statutory Interpretation in the "Modern" Federal Courts*, 75 Col.L.Rev. 1299 (1975).

[52] The Comptroller General also found that the legislative history indicated Congress' intention that funds "should be distributed to local governments, who then were to make the necessary decisions

The court's failure to properly divine congressional intent allowed it to find that S.D.C.L. § 5-11-6 was not in conflict with the Act. Indeed, any state interference on its face would appear inappropriate since the Act, by directing the funds to units of local government, excluded the states' participation in how the federal funds were to be expended.[53] "If the counties wish to distribute some of the money to school and other special purpose districts they certainly may . . . However, they are not compelled to do so." *Lawrence County* v. *State of South Dakota*, 513 F.Supp. at 1042.

ii. The court misinterpreted the plain meaning of Section One of the Act and the Act's other provisions and ignored other acts which provide special relief to school districts

The majority opinion below relied heavily upon a finding that because expenditures on school districts would constitute a "governmental purpose," South Dakota could independently determine that the County must direct sixty percent of its Section One receipts to school districts. J.S.App. at 4a. While correct that expenditures for public education would be one of many legitimate governmental purposes, *see supra* note 25, the court confused the question whether education is a purpose for which the funds can be used with the more crucial inquiry of determining which governmental unit has the right under the Act to decide the governmental purposes for which the funds are actually spent. There is no question that the County is the recipient of Section One payments

on how to distribute them to meet their internal needs." 58 Comp. Gen. 19, 24 (1978).

[53] *Cf.* Rogers v. Brockette, 588 F.2d at 1072. In *Rogers*, the Court examined the legislative history and statutory scheme to determine if Congress indicated "any general distrust of state governments." *Id.* 588 F.2d at 1072. Finding none, the Court held that Texas' laws affecting the federal breakfast program were not unconstitutional. *Id.* 588 F.2d at 1073.

in the first instance. However, the court below held that the provision of funds to affected school districts under Section Three meant that school districts would still be appropriate recipients of Section One payments. "We do not believe that by earmarking school districts as recipients of [Section Three] funds Congress thereby manifested its intent to exclude them from [Section One] funds." J.S.App. at 4a. The County has not maintained that school districts are excluded from receiving Section One payments; however, they can receive those payments only in an amount determined by the County, the initial recipient. The South Dakota Supreme Court's simplistic analysis of "any governmental purpose" as embracing school districts, while ignoring other governmental purposes, undermines the basic objectives of the Act.[54]

South Dakota's tampering with the federal scheme and restriction on the county's discretion, whether or not the result the state statute achieves would have otherwise been permissible, is irrelevant. *See Jones* v. *Rath Packing Co.*, 430 U.S. at 540.[55] Accordingly, the South Dakota

[54] The South Dakota court also ignored the fact that it is the Secretary of the Interior and not the state legislature which establishes guidelines as to how Section Three payments are to be distributed to "affected" school districts. 31 U.S.C. § 6904. Further, school districts are not only expressly provided for in Section Three, but receive impact aid under 20 U.S.C. § 236 precisely to compensate them for the added costs of providing education for federal employees on federal tax-exempt lands within the school districts' boundaries. *See* Middletown School Committee v. Board of Regents, 439 F.Supp. at 1122. It would appear unnecessary for Congress to provide for them again in Section One of the Act.

[55] For this reason, the court adroitly found that it was "feasible" for the County to comply with the Act and the South Dakota statute. *Id.* "Feasibility" is not the proper standard for determining conflict and evidences the court's misunderstanding of its obligations to preserve the supremacy of federal law.

Supreme Court committed substantial error in upholding the state's power to alter the federal regulatory scheme and in failing to properly analyze the purposes and intent of Congress underlying the Act.

CONCLUSION

Congress intended the County to determine where to spend payments it received under the Act free of state influence. Congress imposed no restrictions on the County's use of the funds other than the requirement that they be used for a governmental purpose. The Act was designed in large part to ensure that Section One payments reach the units of local government first because the states were not directing enough funds to the local governments under other statutes. The South Dakota statute would defeat the intended effect of the Act by unconstitutionally supplanting the scheme created by Congress and compromising express congressional policy.

The decision below stands as the authority for the diversion and misdirection of more than $5 million annually from the appropriate local governments in South Dakota contrary to the terms and purposes of the Act. Failure to overturn that decision would invite other states to similarly misdirect the $100 million annual nationwide appropriations under the Act. This complete reworking of a considered and express congressional plan should not stand. For all the foregoing reasons, this Court should

reverse the decision of the Supreme Court of South Dakota.

Respectfully submitted,

ALAN RAYWID
Counsel of Record
JOHN D. SEIVER
COLE, RAYWID & BRAVERMAN
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006
(202) 659-9750
Attorneys for Appellants

ROGER TELLINGHUISEN
LAWRENCE COUNTY STATES ATTORNEY
Deadwood, South Dakota 57732
Of Counsel

June 11, 1984